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SURFACE TRANSPORTATION BOARD

505 Sansome Street, Suite 1800 • San Francisco, CA 94111

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HELM
FINANCIAL CORPORATION

November 5, 2009

Anne K. Quinlan, Esq.
Acting Secretary
Surface Transportation Board
395 E Street S.W.
Washington, D.C. 20423-0001

RE: Assignment and Assumption Agreement dated as of January 2, 2008 between The Connell Company as Assignor and Helm Financial Corporation as Assignee ("Assignment")

Dear Acting Secretary Quinlan:

On behalf of Helm Financial Corporation, I submit for filing and recording under 49 U.S.C. Section 11303(a) and the regulations promulgated thereunder the following document:

One (1) fully executed original of the above-referenced Assignment

In connection with the recording of the Assignment, please note the following information:

Name and Address of Assignor:

The Connell Company
200 Connell Drive
Berkeley Heights, NJ 07922

Name and Address of Assignee:

Helm Financial Corporation
505 Sansome Street, Suite 1800
San Francisco, CA 94111

Equipment:

49 SD40-2 Locomotives
BNSF 7063-7074 (inclusive) and BNSF 7832-7868 (inclusive)

Please record this Assignment as a supplemental agreement to STB Recordation No. 9445 filed on June 10, 1978. The filing fee of \$41.00 is on account.

Summary: Assignment and Assumption Agreement dated and effective January 2, 2008 between The Connell Company as Assignor and Helm Financial Corporation as the Assignee for 49 SD40-2 Locomotives, BNSF 7063-7074 (inclusive) and BNSF 7832-7868 (inclusive), to be filed as a supplemental agreement. Please file this Assignment and Assumption Agreement as a supplemental agreement to STB Recordation No. 9445.

Yours truly,



Sharon L. Van Fossan
Supervisor Contract Administration

/svf
Attachment

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ASSIGNMENT AND ASSUMPTION AGREEMENT

SURFACE TRANSPORTATION BOARD

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT ("Assignment") is dated January 2, 2008 ("Closing Date"), by and between THE CONNELL COMPANY, a New Jersey corporation ("Assignor") and HELM FINANCIAL CORPORATION, a California corporation ("Assignee").

RECITALS

WHEREAS, pursuant to the terms and conditions of that certain Agreement of Purchase and Sale dated as of December 21, 2007, between Assignor and Assignee ("Agreement"), the Assignor desires to assign and delegate to Assignee all of its rights and obligations under that certain Amended and Restated Lease of Railroad Equipment dated as of December 28, 2000 between Assignor, as lessor and BNSF Railway Company (f/k/a The Burlington Northern and Santa Fe Railway Company), as lessee ("BNSF"), as amended by that certain First Amendment and Extension to Amended and Restated Lease of Railroad Equipment dated as of November 23, 2004, between the same parties (the "BNSF Lease") and pertaining to the locomotives ("Units") all as more particularly described on Schedule A hereto.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. **Assignment.** Assignor hereby forever and irrevocably assigns, transfers, delegates and sets over to Assignee all of its right, title and interest in and to the BNSF Lease, subject to no liens, security interests or other encumbrances ("Liens") arising by, through or under Assignor, other than Liens permitted under the BNSF Lease; provided, however, that Assignor retains and does not assign to Assignee, the following rights: (a) the right to payment of (i) all rents and all other amounts (including, without limitation, Casualty Value (as defined in the BNSF Lease) payments) due and payable under the BNSF Lease for all rental periods through and including January 2, 2008, and (ii) the right to the payment of indemnities and liability insurance proceeds which are now or hereafter payable to the Assignor for its own account under the BNSF Lease, in respect of any claims with respect to the BNSF Lease or the Units relating to periods ending on or prior to January 1, 2008, and (b) the right to enforce payment of the amounts referred to in the foregoing clause (a) of this paragraph without cost or expense to the Assignee. Assignor acknowledges and agrees that Assignee shall receive all rentals and other monies due and payable under the BNSF Lease for all rental periods on or after January 3, 2008. If Assignor shall have received from BNSF rental pertaining to January 3, 2008, then Assignor shall hold such amount in trust and shall remit such amount to Assignee promptly after Assignor has collected such amount.

2. **Assumption.** Assignee hereby accepts the foregoing assignment and assumes and agrees to fully and timely perform all of the obligations and liabilities of the Lessor under the BNSF Lease, to the extent such obligations and liabilities first accrue and arise on or after the Closing Date and pertain to time periods on or after the Closing Date.

3. **Further Assurances.** At the request of a party and without further consideration, the other party shall execute and deliver such additional instruments of transfer and will take such other action as such requesting party may reasonably request in order to more effectively carry out the transactions contemplated in this Assignment.

4. **Counterparts.** This Assignment may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

5. **Binding Effect.** This Assignment shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

6. **Governing Law.** This Assignment shall be governed by, and construed in accordance with, the laws of the State of New York without reference to its conflict of laws provisions.

IN WITNESS WHEREOF, the parties, pursuant to due authority, have executed this Assignment through their authorized representatives as of the date first above written.

ASSIGNOR

ASSIGNEE

THE CONNELL COMPANY

HELM FINANCIAL CORPORATION

By:  _____

By: _____

Name: **SHANE CONNELL**
EXECUTIVE VICE PRESIDENT

Name: _____

Title: _____

Title: _____

IN WITNESS WHEREOF, the parties, pursuant to due authority, have executed this Assignment through their authorized representatives as of the date first above written.

ASSIGNOR

ASSIGNEE

THE CONNELL COMPANY

HELM FINANCIAL CORPORATION

By: _____

By: *John F. Dains*

Name: _____

Name: JOHN F. DAINS

Title: _____

Title: CHAIRMAN + CEO

SCHEDULE A

TO ASSIGNMENT AND ASSUMPTION AGREEMENT

Description of the Units: Forty-nine (49) SD40-2 Locomotives

| <u>Unit Reporting Mark & Number</u> | | | <u>Unit Reporting Mark & Number</u> | | |
|---|------|------|---|------|------|
| 1 | BNSF | 7063 | 31 | BNSF | 7850 |
| 2 | BNSF | 7064 | 32 | BNSF | 7851 |
| 3 | BNSF | 7065 | 33 | BNSF | 7852 |
| 4 | BNSF | 7066 | 34 | BNSF | 7853 |
| 5 | BNSF | 7067 | 35 | BNSF | 7854 |
| 6 | BNSF | 7068 | 36 | BNSF | 7855 |
| 7 | BNSF | 7069 | 37 | BNSF | 7856 |
| 8 | BNSF | 7070 | 38 | BNSF | 7857 |
| 9 | BNSF | 7071 | 39 | BNSF | 7858 |
| 10 | BNSF | 7072 | 40 | BNSF | 7859 |
| 11 | BNSF | 7073 | 41 | BNSF | 7860 |
| 12 | BNSF | 7074 | 42 | BNSF | 7861 |
| 13 | BNSF | 7832 | 43 | BNSF | 7862 |
| 14 | BNSF | 7833 | 44 | BNSF | 7863 |
| 15 | BNSF | 7834 | 45 | BNSF | 7864 |
| 16 | BNSF | 7835 | 46 | BNSF | 7865 |
| 17 | BNSF | 7836 | 47 | BNSF | 7866 |
| 18 | BNSF | 7837 | 48 | BNSF | 7867 |
| 19 | BNSF | 7838 | 49 | BNSF | 7868 |
| 20 | BNSF | 7839 | | | |
| 21 | BNSF | 7840 | | | |
| 22 | BNSF | 7841 | | | |
| 23 | BNSF | 7842 | | | |
| 24 | BNSF | 7843 | | | |
| 25 | BNSF | 7844 | | | |
| 26 | BNSF | 7845 | | | |
| 27 | BNSF | 7846 | | | |
| 28 | BNSF | 7847 | | | |
| 29 | BNSF | 7848 | | | |
| 30 | BNSF | 7849 | | | |

STATE OF NEW JERSEY)
) S.S.
COUNTY OF UNION)

On January 2, 2008, before me, Christopher O. Jegede, personally appeared Shane Connell, the Exec. Vice President of THE CONNELL COMPANY, who

☒ is personally known to me -OR-

☐ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

CHRISTOPHER O. JEGEDE
NOTARY PUBLIC OF NEW JERSEY
REGISTERED IN UNION COUNTY
MY COMMISSION EXPIRES JUNE 19, 2008
[Notarial Seal]


SIGNATURE OF THE NOTARY

STATE OF CALIFORNIA)
) S.S.
COUNTY OF SAN FRANCISCO)

On _____, before me, _____, personally appeared
_____, the _____ of HELM FINANCIAL CORPORATION,
who

☐ is personally known to me -OR-

☐ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

SIGNATURE OF THE NOTARY

[Notarial Seal]

STATE OF NEW JERSEY)
) S.S.
COUNTY OF UNION)

On _____, before me, _____, personally appeared
_____, the _____ of THE CONNELL COMPANY, who

_____ is personally known to me -OR-

_____ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

SIGNATURE OF THE NOTARY

[Notarial Seal]

STATE OF CALIFORNIA)
) S.S.
COUNTY OF SAN FRANCISCO)

On December 31st 2007, before me, J.L. Pat Taft, personally appeared
John F. Dains, the Chairman & CEO of HELM FINANCIAL CORPORATION,
who

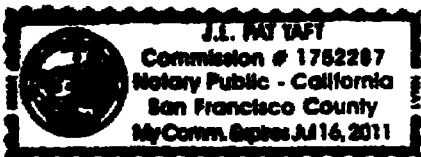
☒ is personally known to me -OR-

_____ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

SIGNATURE OF THE NOTARY



[Notarial Seal]